

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7440

Petition of Entergy Nuclear Vermont Yankee, LLC, and)
Entergy Nuclear Operations, Inc., for amendment of)
their Certificates of Public Good and other approvals)
required under 10 V.S.A. §§ 6501-6504 and 30 V.S.A.)
§§ 231(a), 248 & 254, for authority to continue after)
March 21, 2012, operation of the Vermont Yankee)
Nuclear Power Station, including the storage of spent-)
nuclear fuel)

Order entered: 1/29/2010

PROCEDURAL ORDER

On January 27, 2010, the Vermont Public Service Board ("Board") convened a status conference in this proceeding in response to a letter from the Department of Public Service ("Department") that stated that Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively "ENVY") had not provided accurate information to the Department or its contractor (Nuclear Safety Associates ("NSA") in conjunction with the reliability assessment of the Vermont Yankee Nuclear Power Station ("Vermont Yankee") required by Act 189 of the 2007-2009 Vermont Legislature. The Department's letter indicated that ENVY had incorrectly informed the Department and NSA that no underground pipes existed that fell within the statutory directive, when in fact such pipes did exist, thus raising questions about whether the requirements of Act 189 had been met. Subsequent to the Department's filing, the New England Coalition ("NEC") and Conservation Law Foundation ("CLF") also filed requests for the Board to take further steps in response to the new information on underground piping, as well as the recent discovery of tritium in monitoring wells surrounding Vermont Yankee. NEC and CLF also stated that this new information indicated that sworn testimony provided by ENVY witnesses to this Board was inaccurate.

As we noted at the status conference, we are deeply concerned about the possibility that ENVY may have provided false information for an extended period of time – not only under oath

in the Board hearing room, but also to the Department, to the state's contractors conducting the comprehensive vertical audit, to the Public Oversight Panel, to the legislature, and to the public – and did nothing to correct the record. We are further concerned about the recent discovery of tritium discharges at Vermont Yankee. Both the underground piping systems and the tritium discharges may have a direct affect on various aspects of our decision in this proceeding, including issues related to operational reliability, the costs and timing of decommissioning, the adequacy of the decommissioning fund, the adequacy of any financial guarantees, and ENVY's managerial and technical competence.

The provision of timely, accurate and complete information is essential to our decision in this proceeding and to the cases presented by the other parties (and, as well, to the legislature's own, parallel determination). Therefore, at the status conference we stated that:

As this case proceeds, we will require Entergy to provide prompt and complete corrections to any inaccurate information that it has provided. At a minimum, we expect that Entergy will provide full, accurate information on the underground piping, a full explanation of how the incorrect information was provided and why it was not corrected, and a description of what steps Entergy has taken and will take to rectify the situation and prevent it from happening again. We will want to know the full extent, and with specific detail, of the plans and any other information that Entergy had regarding the existence of underground piping carrying radionuclides, when Entergy acquired such plans and information, and who at Entergy was responsible for knowing this information. We will require that Entergy review its discovery responses to ensure that it complies fully with its obligation to correct any inaccurate or incomplete responses that it has made. We will also require that Entergy review its testimony in this case and verify that it has filed all information it promised to provide at a later date. We will want to know the implications of the piping and the tritium discharges on the scope, schedule, and costs for decommissioning the Vermont Yankee station, including updated estimates of the adequacy of the decommissioning fund in light of recent developments.

At the status conference we also considered what additional steps should be taken in this proceeding to address these recent developments, as discussed below.

UNDERGROUND PIPES CONTAINING RADIONUCLIDES

The Department stated that it had begun working with NSA and ENVY to identify the additional work necessary to evaluate the newly revealed underground piping system at Vermont

Yankee that carries radionuclides as required by Section 3(a)(7) of Act 189. At the present time, the Department stated that it did not know when that work would be completed. The Department recommended that the Board not establish a schedule for further proceedings on issues related to the underground piping until the Department had more information on the scope and timing of the work. Instead, the Department proposed that the Board schedule a status conference once the Department knew when the additional assessment would be completed. ENVY also stated that it was working to provide the Department with additional information; ENVY is also conducting a root cause analysis to determine why inaccurate and incomplete information was provided to the Department, the Public Oversight Panel, and other parties. ENVY committed to make public the results of this review once it is completed.

We accept the Department's recommendation. At this time, we will not adopt a schedule for resolution of issues related to the recent disclosure of the existence of underground piping systems at Vermont Yankee. We will schedule an additional status conference once the Department notifies us that it has sufficient information on the scope and timing of the additional work by NSA to allow us to set a schedule.

CLF REQUEST RE: STRIKING PORTIONS OF THE RECORD

CLF asked that the Board require ENVY to show cause why all evidence and argument in this docket that is "affected by the false information" should not be stricken from the record. ENVY committed to evaluate and correct any information in the record related to the recent disclosure of the underground piping systems.

We decline, without prejudice, to issue the show-cause order requested by CLF at this time. CLF's request does not provide us with sufficient specific information to determine what portions of ENVY's case might be stricken. We recognize CLF's contention that ENVY should bear the burden to demonstrate that its prior evidence has not been tainted. However, given that ENVY will be reviewing the record to determine what, in its view, needs correction, it appears premature to issue at this time the show-cause order that CLF requests. Furthermore, regardless of whether we were to issue a show-cause order or, as we choose here, require ENVY to identify and correct all inaccurate evidence and discovery responses, the other parties would need to

review ENVY's filing and inform the Board if they believed ENVY did not sufficiently identify those elements of the record that need correction. Consequently, we will wait for the completion of ENVY's assessment and its proposed alterations to testimony, exhibits, and discovery responses. If CLF or any other party believes that further adjustments to the record are necessary after ENVY completes its assessment and submits proposed changes to the record, it may file a properly supported motion.

We understand that ENVY is now focusing its efforts on issues related to the disclosure of underground pipes. However, we also direct that ENVY take the following steps:

- Examine the entire record to verify the accuracy of the information that ENVY has provided to this Board;
- Review its discovery responses to ensure that ENVY complies fully with its obligation to correct any inaccurate or incomplete responses that it has made; and
- Ensure that, in each instance in which ENVY or one of its witnesses committed to provide the Board with additional information or to conduct further investigation, ENVY has provided that additional information.

IMMEDIATE SHUTDOWN OF VERMONT YANKEE

CLF also requested that the Board require ENVY to show cause why, pending complete repairs of any leaks, Vermont Yankee should not be immediately shut down to avoid environmental harm from leaks of radioactive material and radionuclides. We established the following schedule for resolution of this issue:

February 3, 2010

ENVY files response to CLF Motion

February 10, 2010

CLF files reply comments, and other parties file responses to ENVY response, and to CLF Motion

NEC REQUEST FOR COSTS

In its January 19, 2010, letter, NEC stated that it believed that the Board "should require ENVY to compensate the parties for the time and expense necessary to examine and address" the information related to the underground pipes that was not provided originally. ENVY stated that

as part of its assessment of further steps, it was considering NEC's request. Accordingly, we will not address the issue of compensation for costs at the present time, but will await ENVY's proposal. If further issues remain, NEC or other parties may file a properly supported motion requesting cost recovery.

SO ORDERED.

Dated at Montpelier, Vermont, this 29th day of January, 2010.

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|------------------------|---|----------------|
| <u>s/James Volz</u> |) | |
| |) | PUBLIC SERVICE |
| |) | |
| <u>s/David C. Coen</u> |) | BOARD |
| |) | |
| |) | OF VERMONT |
| <u>s/John D. Burke</u> |) | |

OFFICE OF THE CLERK

FILED: January 29, 2010

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)